Posted work and deterritorialization in the European Union

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5. EU POSTED WORK AND TRANSNATIONAL ACTION IN THE GERMAN MEAT INDUSTRY[15]

5.1 Introduction

Territorial boundedness and coherence long served as the backdrop for the efficient functioning of industrial relations institutions. Europeanization, however, has arguably started to disassociate, or deterritorialize, the bonds that tied trade union structures to fixed spatial configurations. In Germany unions are struggling to adapt to these new challenges while also aiming to 'reterritorialize' the relations with labour migrants. Reterritorialization implies the reinsertion of an element previously extracted from one context (this is called deterritorialization) into another. While a certain destruction takes place during deterritorialization, it also opens up the opportunity for reterritorialization. Deterritorialization in its most

[15] A slightly altered version of this chapter has been accepted and is forthcoming at *Transfer: European Review of Labour and Research* as part of the special issue 'European Collective Action in Times of Crisis' 2015-2: Wagner, I. "EU Posted Work and Transnational Action in the German Meat Industry" *Special Issue: European Collective Action in Times of Crisis. Transfer*: *European Review of Labour and Research 2015-2*. Accepted and forthcoming.

useful sense therefore forces us to think anew about how territorial configurations are challenged and re-challenged (Ó Tuathail, 1998: 82; Cox, 1997; Brenner, 1999).

This chapter examines recent efforts to re-embed or reterritorialize posted workers in collective representation in the German meat industry. This industry is currently the leading meat producer in the EU. Its economic success can be attributed to a combination of high technological standards and a low-wage and increasingly transnational workforce. German meat companies profited from lower labour costs, labour flexibility and posted workers' isolation from collective representation. By contrast, transnational posting weakened the position of the NGG (*Gewerkschaft Nahrung Genuß-Gaststätten*), the trade union representing the meat industry. However, the union is now seeking alternative ways to counteract the often-precarious employment situation of the posted workforce. While the comparative industrial relations literature argues that German trade unions are unlikely to form coalitions with other civil society organisations (Baccaro *et al.*, 2003), surprisingly it is exactly these kinds of coalitions that seem able to build relations with posted workers and reintegrate them into the host country's institutional framework. From an analytical perspective, I consider these coalitions as examples of reterritorialization, that is, a form of resistance in increasingly deterritorialized labour markets (Pile and Keith 1997).

Through an exemplary case study I will trace the process and explore the conditions under which reterritorialization can evolve in these transnational workspaces, in this case through an alliance in the meat industry between transnational posted workers, a local civil society organisation and the trade union NGG. The case study concerns a group of Polish posted workers employed in the German meat industry resisting precarious management practices. A local community initiative, the NGG and the media played a major role in facilitating resistance. The case demonstrates that the transnational nature of posted workers' employment relationship and living situation requires a different approach to organising resistance beyond the traditional institutional perspectives on German

trade unionism. The case goes against traditional arguments that German trade unions usually refrain from forming coalitions because of their institutional position and Germany's strong employment law. I ask the following questions: Under which conditions are posted workers able to exercise voice when traditional channels of representation are absent? How can we explain a shift by a trade union in a national context in which it is more uncommon than not to mobilise labour migrants from the grassroots in coalition with civil society actors? And under which conditions are these coalitions successful?

The present case contributes in a number of ways to findings from other studies of union strategies towards labour migrants (among them Krings, 2013; Bengtsson, 2013; Tapia and Turner, 2013; Lillie and Greer, 2007). In doing so, it aims to enhance understanding of the challenges and limitations for traditional and non-traditional actors in a pan-European labour market. First, it highlights the shift in German unions' strategy from social partnership to coalition-building (Greer, 2008), revealing blind spots in cross-national comparative perspectives based on institutional equilibrium (Tapia and Turner, 2013). Second, it demonstrates the conditions under which such coalitions emerge and are successful. Third, it illuminates how posted workers can be embedded in the host-country institutional system and voice concerns in situations where traditional channels of representation are inefficient (Tapia and Turner, 2013). Fourth, the case highlights how unpromising prospects for goal attainment, instead of opportunity structures, can also enhance chances of forming coalitions (McCammon and Campbell, 2002). Finally, it emphasises the importance of engaging with migration and its different configurations in relation to industrial relations, an area too often neglected by industrial relations scholars (McGovern, 2007; for exceptions, see Berntsen, forthcoming; Wagner, 2014; Alho, 2013; Fine, 2006; Holgate, 2005; Milkman, 2006; Wills, 2004).

This chapter proceeds as follows. First, the EU-induced deterrorializing tendencies in the posting labour market as well as the reterroritorialization

possibilities for trade unions are explored. The following section describes the research methods, followed by the case study on transnational action in transnational workspaces. In the discussion I explore what this case can tell us about contemporary debates in comparative political economy and industrial relations. These insights contribute to our understanding of how unions can and should interact with labour migrants in an era when labour mobility is both intensified and politically contested (McGovern, 2007) and how far these relations contribute to renewed union solidarity and vitality (Le Queux and Sainsaulieu, 2010).

5.2 De- and reterritorialization in the context of EU worker posting

A fundamental characteristic of the modern nation state and of democratic societies is the territorial basis of its legislation (Supiot, 2009). The territorial principle also extensively regulates industrial relations and working and employment conditions. Most supranational regulations concerning employment conditions leave this basis in place. For example, when labour migrants cross borders via the free movement of persons they enter a new legal system and become subject to the legislation of the destination country. By contrast, posted workers move as dependents of service providers. Worker posting became increasingly relevant after the Eastern European enlargement due to socioeconomic differences between the EU member states. Posted workers are regulated under the free movement of services instead of migration. As a result, their employment relationship is embedded in (at least) two national contexts and social security contributions are paid in the home country. Even though they work in the territory of the host country, they are regulated under a different regulatory framework and largely excluded from the host-country institutional system. While migrant workers are regulated under an *international* framework, posting follows a

transnational pattern because their employment relationship is mediated by their employer instead of by the host country (Lillie, 2011).

Posting firms determine the duration of stay in the host country as well as some of the applicable workers' rights by basing themselves in countries with a favourable regulatory regime. Following an employer-managed migration pattern, the company determines and certifies who is to move and who is not. The rights of posted workers are increasingly related to their employer instead of the sending or receiving country (Guild, 2001). The growth of posting thus follows a path laid by the gradual unfolding of tensions between the international system and national industrial relations institutions, representing a particular form of what Bruff (2010) calls an 'articulation between the national and the international' (2010: 616). Posted workers, even though working in the host-country territory, are disconnected to a large extent from that country's institutional system and labour relations. Posting disentangles the borders, tying economics, politics and culture to fixed spatial configurations. In the posting-of-workers discussion, *deterritorialization* connotes the decontextualization of labour law and industrial relations systems from particular territorial ties (Mundlak, 2009). The European Union deterritorializes capital and labour from the restrictions of national regulatory systems (Bailey, 2010).

This context poses a challenge for industrial relations, working and employment conditions, and modern unions because these institutions evolved in symbiosis with the nation state and are also extensively regulated by national legislation (Streeck and Hassel, 2003). In Germany, employment relations grounded in the concept of social partnership (Behrens *et al.*, 2004), feature institutional representation through collective bargaining as well as the workplace-independent but union-dominated works council system. The latter not only diminished competition between unions but also secured interest representation in the workplace. Collective bargaining, just like labour market regulation, was territorialized by embedding a legal pattern within and through the state, with its

coverage usually limited to employers and workers within the territory's borders (Mundlak, 2009). European integration gave employers the option to exit territorial regulation. The posting regulation enables them to insource labour from other regulatory regimes into the country where the work is carried out.

In the German meat industry the absence of a minimum wage made the outsourcing of certain parts of the production process particularly interesting. The social partners in the meat industry introduced a sectoral minimum wage only in January 2014. Before that, the NGG faced severe employer resistance to industry-level bargaining. In fact, the employers' association in the sector even dissolved at one point, depriving the union of a centralised counterpart at the bargaining table (Behrens and Pekarek, 2012). Moreover, works councillors have no rights to engage with posted workers or co-decide whether subcontractors are employed. Organised labour has little influence over subcontracting at all. This created workspaces in which home-country conditions in fact applied to the posted workforce. The wages are calculated according to the state where the firm is based, creating 'regime competition' (Streeck, 1992) between workers.

This creates workspaces in which, in order to cut labour costs, employers in Germany hire foreign workers under different employment conditions that depend on the seat of the service provider, even though the employees themselves work in the same workspace performing similar jobs. These practices create and reproduce workspaces physically inside, but juridically and socially apart from, national systems (Wagner and Lillie, 2014). For example, a Poland-based company can legally offer to send its employees to Germany to process a certain amount of meat in a certain amount of time at a German slaughterhouse. Its employees perform their work at the German company, but their wages and employment rights refer partly back to the sending country's standards. This deterritorialization of the labour market has resulted in the employment of a largely Eastern European workforce working for three to five euros per hour.

However, deterritorialization is regarded as a process consisting of both

destabilising and stabilising tendencies, or reterritorialization (Deleuze and Guattari, 1988/2004: 98). Transnational workspaces need not be spaces of exclusion. Resistance may reterritorialize spaces in various ways in order to transform their meanings and 'enable [them] to become [spaces] of citizenship, democracy and freedom' even within limits (Pile and Keith, 1997: 30). The margins especially have recently been discussed as sites of resistance. Other forms of regulation may also produce 'other' voices (Hetherington, 2003). The reterritorialization process arises from the re-embedding of elements into a different context. In this case reterritorialization could mean disembedding posted workers from the meat industry's (absent) regulatory framework that lacks collective action (deterritorialization) into an inclusionary framework with collective interest representation. In the traditional industrial relations literature, collective bargaining is viewed as a process aimed at re-embedding an otherwise oppressive environment (Colling and Terry, 2010; Katz *et al.*, 2008). Where no such channels exist, employers resist power-sharing, and workers may require a more active mobilisation to promote their interests and win acceptance of collective representation (Tapia and Turner, 2013).

The union revitalisation literature argues that variations in trade unions' institutional position explain different strategic choices in their organising efforts with previously unorganised groups of workers, such as migrant workers (Baccaro *et al.*, 2003; Frege and Kelly, 2003; Krings, 2009). Previous studies discussed the ability of unions in various host countries to organise migrant workers after the enlargement of the European Union in 2004 (Bengtsson, 2013; Eldring *et al.*, 2012; Fitzgerald and Hardy, 2010). Depending on institutional strength, sectoral characteristics, and their ability to innovate, unions in, for example, the UK, Denmark and Sweden managed to include migrant workers by employing staff with relevant language skills or by cooperating with other organisations.

German unions are under similar strain to include previously unorganised groups of workers. Nevertheless, it is argued that the institutional embeddedness

of German unions and a 'framework of employment law [that] has remained broadly supportive,' restrains them from seeking coalitions with community organisations, mobilising workers outside the usual tool of the strike, and framing issues in terms of social justice (Frege, Heery and Turner 2004: 146). If they did so in the past, the issues were not vital to union interests. However, most of what we know about German industrial relations is based primarily on studies of large manufacturing firms (Greer, 2008). Also important are differences within countries (Artus, 2007) and within transnational contexts. In the case considered here, the meat trade union NGG has sought to establish closer ties with community initiatives. To mobilise resistance in the absence of collective representation, and in the absence of collective bargaining, unions do in fact seek to build coalitions with other actors.

5.3 Research methods

This article focuses on the German meat industry because posted work is increasingly used in this sector to cut labour costs and undermine worker voice (Krings, 2009). The study is based on qualitative open-ended interviews with posted workers from Poland, Romania and Bulgaria. The interview focus was to gain insight into the workers' lived experience of their employment relations, and to learn how they had resisted management practices in an environment overtly hostile to trade unionism. I triangulated this material with expert interviews, union reports and newspaper articles (Stake, 1995). I conducted interviews and follow-up interviews with activists from a local community initiative, NGG staff, works councillors and management from the main contractor. In addition to these interviews, I spent several afternoons at the workers' and activists' housing sites, where group interviews were undertaken. The research data was stored and coded using MAXQDA qualitative data analysis software. All interviews are anonymised in order to protect the informants.

This case study is embedded within the context of a four-year study on posted work in the meat and construction sector in Germany and is part of a larger project comparing posted work in Germany, the Netherlands, Finland and the UK (ERC Starting Grant #2637820). In this respect, it not only contributes to a growing body of qualitative studies that illuminate workers' position and their possibilities for resistance in poorly regulated workspaces various EU countries, but also connects the findings to a developing literature on how immigrants and contingent workers are organised under circumstances in which traditional mechanisms of industrial relations systems are marginalised (Berntsen and Lillie, 2014; Tapia and Turner, 2013; Vandaele and Leschke, 2010). It also contributes to the literature on migration and industrial relations, a topic still largely neglected by industrial relations scholars (McGovern, 2007; for exceptions, see Fine, 2006; Holgate, 2005; Milkman, 2006) which is an input in theory development (Gerring, 2004).

5.4 Transnational action in the German meat industry

The production process in the meat-slaughtering and meat-packaging sector is fragmented through a specific division of labour between large contractor firms and small and medium-sized subcontractors. Since the Eastern enlargement of the European Union in May 2004, the large German slaughterhouses have scaled down the core workforce to a minimum (NGG, 2013). Labour is the first expense of a company operating in the meat sector, representing up to 82% of the net added value (Mériaux, 2011). Therefore, labour costs have a direct impact on competitiveness and are reduced by increasingly employing posted workers via subcontracting arrangements. As a result, the majority of the meat slaughtering and processing in Germany today is done by posted and temporary workers from Eastern Europe working for an hourly wage of about three to five euros (NGG, 2013).

A combination of 'an unholy alliance of technical efficiency and wage

dumping' has led to an increase in exports and related profits for meat companies based in Germany (NGG, interview, 2013). In this process the meat industry has seen a numerical reduction of companies accompanied by the expansion of a few large companies, with little or no communication taking place between them (Sebastian, 2014: 20–21). The low production costs in Germany have become widely known abroad. On the one hand, international meat companies are moving their production to Germany in order to escape from the tighter regulatory frameworks of their countries, such as Denmark (Hassel *et al.*, forthcoming). On the other hand, European countries like Belgium, France and Austria have started to accuse Germany of unfair competition practices due to employing posted workers under 'dumping' wages and of undermining traditional forms of worker representation.

The main response at the policy level from the NGG to increased labour migration has been to demand the introduction of a legally binding minimum wage. At the workplace level, organising hypermobile workers proves to be an inherently challenging task. Workers oftentimes accept substandard employment due to experiences of unemployment in the home country or because of cross-country wage differentials. The workforce is often unfamiliar with or rarely seeks the help of collective channels of representation (NGG, interview, 2013). Moreover, worker mobility and language barriers inhibit initial or continuous communication with union staff. To a certain extent the challenges of including posted migrants into collective channels of representation revealed the weakness of the trade union itself (NGG, interview, 2013). In order to counteract these processes, the union started to form coalitions with local groups (NGG, interview, 2013). An example of such a coalition as well as the conditions under which it was able to develop and be successful are explored in the following.

5.4.1 Power relations in transnational workspaces

This case involves a group of 82 Polish posted workers. A first-level German agency firm subcontracted their employer, a Polish firm, at a meat factory in Germany. Their employer was a second-level firm. The factory had 1,100 employees in 2012, of which 50% were core personnel and the other half externally employed. Of the external employees, 90% were subcontracted and 10% agency workers (Interview management, 2012). The largest nationality groups of the posted workers are Polish, Romanian and Hungarian (Works councillor, interview, 2012). Due to long subcontracting chains neither the management nor the works councillors of the main contractor were aware of the existence of the second-level subcontractor and the working conditions of its workers.

The workers' contract stated that they would receive an hourly wage of €7.50, with additional overtime, night and weekend work bonuses. Upon arrival they were paid four euros per hour with no bonus pay on top. Moreover, they were treated as a highly flexible source of labour. The supervisors decided late every evening which worker was assigned to work the following day. At times the workers were transported to the factory only to learn that no work was available on that day and consequently did not earn any wages. Some of the workers worked in the meat-slaughtering halls and others in the meat-packaging section. The employer organised the transportation to and from work; on various days workers had to wait hours for the transportation after a ten- to twelve-hour shift. The company did not pay social insurance and sick pay as promised to the workers (Community initiative, interview, 2012). In a severe case, a women who suffered a work accident was sent back to Poland and the lack of treatment resulted in permanent disability (Community initiative, interview, 2012).

Moreover, the living conditions were substandard. Upon arrival the workers were confronted with empty flats and they had to collect furniture from the bulk waste on the street. Eight to twelve workers had to share a two-room flat.

There was no gender separation in the flats and a person close to management lived in each flat in order to watch the workers in their leisure time. In the factory the workers were not provided proper work clothes: even though the clothes adhered to the hygiene standards of the factory, they did not protect the workers against the cold in the cooling chambers where the meat was cut and processed.

Solidarity was difficult to establish within the work team because of high labour turnover and management oversight in their apartments (Interview Polish posted workers, 2012). Moreover, the workers were engaged in industrialized work for the first time and had no prior experience in collectivism. Such attitudes worked in concert with workers' unfamiliarity with the union structure in Germany, fear of employer retaliation and lack of appropriate contacts (Interview Polish posted workers, 2012). Employees had few options for expressing discontent other than unilateral exit. The material motivation for taking up the work in Germany – related to paying off debts, experiences of unemployment in the home country, or being able to finance medial procedures for family members – increased the workers' dependency on the job, and the low-skilled nature of their work placed them in a poor bargaining position (Interview Polish posted worker, 2012).

5.4.2 A 'moment' of transnational action

The labour practices in the meat factory received local and later national attention when the posted workers shared their grievances with a local community initiative. The initiative was created in 2006 and consists of ten volunteer activists, who also finance the incurred costs. Most of the volunteers are employed in the care sector. From its outset the initiative raised a scandal over the arbitrariness of companies and entrepreneurs against their employees in the region of North Rhine Westphalia. Using media pressure, it has organised public solidarity around and supported local work disputes on, for example, the unlawful termination of works

councillors or the improper use of 'one-Euro jobbers'[16]. While the community initiative had experience in mobilising workers and creating public solidarity, by 2012 they had not yet interacted with hypermobile EU workers.

The posted workers' housing sites were based in the same town where two activists from the community initiative lived. The story began when two activists became aware of the posted workers' situation by chance. One activist, a Polish native speaker, overheard a conversation of the Polish posted workers in the local store and started to make conversation. In the opinion of the activist, trust was established because of their shared nationality and language and, having herself immigrated to Germany many years before, she came to be regarded by the workers as a confidant (Interview community initiative, 2012). Meeting a fellow Polish native speaker served as a catalyst for the workers, who shared their grief about their work and living conditions. However, after the initial chat the workers did not want to act on their situation further. Nevertheless, the two activists decided to try and mobilise the workers.

The initiative informed the union from the beginning about the workers' situation. Ideological positions influenced the likelihood of the emergence of the coalition. The activists are trade union members themselves. They believed it to be important to include the NGG in the process. Together they decided that the community initiative would try to establish further contact with the workers and keep the union informed. The initiative sought contact with workers over a period of several months by repeatedly visiting their housing site and distributing flyers with information about the workers' rights. Finally, contact with a group of six workers was established by entering the housing site without management noticing. The workers trusted the two activists and repeatedly visited the activists' home on Sunday afternoons. Together they looked at their contractual situation in order to decipher which rights the workers had and how they could claim them

[16] One-euro jobs are intended for unemployed persons in order to reintegrate into the employment relation. It has been observed that firms use it to employ low-wage labour (Dörre, 2005).

(Interview community initiative, 2012).

In response to the precarious working situation and the workers' dependency on the employment, the initiative decided on a strategy of media attention. The aim was to present the case in a social justice frame to win public support. The initiative used informational materials from the trade union and later depended on the union to negotiate with the employer. They also started to organise a strike action in front of the meat factory; however, the management response resulting from the media pressure made the planned strike action obsolete. The media strategy created public solidarity because it exposed the employers' treatment and publicised the substandard living conditions of the workers' housing. Because a municipal building company owned the workers' apartments, the activists were able to put pressure on local politicians and win their support in the debate. Moreover, the initiative created an online database with detailed information on the main contractor, the subcontracting firm and the municipal housing company as well as employee testimonies about their deficient working conditions. The aim was not just to document the situation but also to create easily accessible information that media and political actors could draw on. Addressing local politics was thus an essential strategy in the procedure. With the workers' consent the activists released a press statement about the workers' precarious working and living conditions. The local and national media responded immediately.

While the workers' initial step to alter their working conditions was to secretively meet with the community initiative, the transformative act was to speak out in a TV documentary by a national public broadcaster. While one worker agreed to give an anonymised interview in front of the camera, others distracted management and guarded the door in order to allow the journalist to film their apartment. Both the documentary and the media coverage by local and national media included the 'shaming' of the main contractor as well as bad publicity for the municipality that hired out the flats to the Polish subcontractors. In the

meantime the community initiative and the NGG prepared for a long battle that would bring company abuses to the public eye, embolden employees, and force major concessions on their behalf.

However, after the airing of the documentary on nationwide television the main contractor terminated contractual relations with the Polish subcontractor. At this point the NGG became more formally involved in the process, organising a meeting with the main contractor and the posted workers in order to clarify their grievances and negotiate the further employment of the workers (NGG, interview, 2012). The outcome was the takeover of the whole workforce by the German agency firm that had previously contracted the Polish subcontractor. The workers were now employed under a German agency contract. Here the agency collective agreement (between the IGZ and the DGB) applies, which entitles workers to the hourly wage of €7.89. The main contractor was forced to make an arrangement with the German agency firm to take over the workers because the localized work stoppage would have caused wider disruptions to the production process. In that sense, the workers, in tandem with the community initiative and the media, were able to exert 'workplace bargaining power' (Silver, 2003: 13).

From the workers' point of view the material gains – in this case higher wages and improved employment and living conditions – were significant. Moreover, workers did not need to feel threatened or intimidated by management anymore, and had a fixed monthly income and proper work clothes. Despite the fact that they were still used as a highly flexible source of labour, the workers appreciated that their work schedules were not as unpredictable as before and that their employment contract was prolonged for one month. Their employment context changed from being excluded from the host-country institutional framework to being included through their employment at a German agency firm. Taking further legal action against the employer would have jeopardized the workers' future employment and therefore outweighed their gains.

5.4.3 From the local to the national

In Lower-Saxony a coalition between priests, ministers, politicians, the trade union and NGOs is involved in a campaign to stir public concern over the exploitative practices of meat companies employing posted workers under precarious work and living conditions. Here, too, media attention in a social justice frame is essential.

This strategy has led to the creation of two service centres within the region funded by the *Land* Lower-Saxony. The service centres are established within civil society organisations where project workers with relevant language skills inform posted workers about labour law and social legislation in their native languages across sectors. The project workers cooperate with the NGG on a daily basis. This development is in fact part of a larger trend in Germany to establish coalitions between trade unions and civil society organisation in order to build solidarity with the posting workforce. The German Federation of Trade Unions (*Deutscher Gewerkschaftsbund* or DGB) has responded to increasing numbers of posted workers by establishing 'fair mobility' centres with the aim of providing information and help to posted workers (Fair mobility, interview, 2013). The centres do not focus on a particular sector and are not part of a trade union but rather simply employ staff with relevant language skills. However, they closely cooperate with trade unions and other NGOs in order to cater to the needs of labour migrants or facilitate the respective contact with other organisations. The fair mobility centres are financed by the DGB, national and European funds and operate on a project basis.

The media pressure not only led to the establishment of service centres for workers but acted as a catalyst to get employers to the bargaining table. According to the ANG's chief executive, the industry has a great interest in restoring its

image. The four large slaughterhouses – Vion, Westfleisch, Tönnies and Danish Crown – became members of the ANG, which now represents all slaughterhouses for pork, beef, poultry and meat-processing plants such as sausage factories. In response to the public debate, ANG started negotiations with the NGG to agree on a minimum wage in order to restore the meat industry's reputation. In January 2014, an agreement was reached introducing a minimum wage as of July 2014, starting at €7.75. One necessary precondition for its applicability for posted workers is its inclusion into the German Posted Workers Law. The sectoral minimum wage starts slightly below the national minimum wage of €8.50, which will come into effect in January 2015. In fact, the awareness-raising on precarious working conditions in the meat industry proved a major factor in mobilizing the discussion on the German minimum wage (Interview DGB, 2014; Behrens and Pekarek, 2012).

In 1996, the EU passed the Posting of Workers Directive, as implemented by the German Posting Law (*Arbeitnehmerentsendegestz*). It entitled posted workers to a set of statutory minimum working conditions. The particularity of the Germany Posting Law is its limitation to certain sectors[17], instead of covering the whole national economy. However, the most important regulatory content of the law is the provision on minimum wages. Due to the long absence of a sectoral minimum wage, the inclusion into the posting law was mainly ineffective (Czommer and Worthmann, 2005). Even though the meat sector has decided on a sectoral minimum wage, it is binding for posted workers through its inclusion in the German Posting Law.

[17] The law initially included the construction, building cleaning and mail services industries. With the amendment of the law in 2009, six other industries were included: the care sector (elderly care and ambulant treatment), security services, waste management (including street cleaning and winter services), training and educational services, laundry services in customer business objects, and special mining work in coal mines. (See: http://www.bmas.de/DE/Service/Gesetze/aentg.html).

5.5 Discussion

The dominant institutional argument in comparative industrial relations is that German unions are unlikely to build coalitions with other civil society organisations (Baccaro *et al.*, 2003). Even as membership declines there is little incentive to change union strategy because of the institutional embeddedness of unions supported by a strong employment law framework. Nevertheless, the case discussed here and the general trend in mobilising posted workers on a national level supports a different view. First, posted work in the German meat industry not only illustrates the alteration of the German institutional system, but rejects the German institutional framework and social regulation wholesale by embedding posted workers in an institutional system other than the German one (Wagner and Lillie 2014). Second, the industrial relations system in the German meat-slaughtering and meat-processing sector corresponds less and less to the image of an institutionally embedded German trade union secured by a stable framework of employment law. In the meat industry, as employers have broken with patterns of cooperation and transnational workspaces have increased, the NGG has sought alternative forms of leverage. The case illustrates an alternative approach to transnational action in the German setting based on forming coalitions with other social actors in an experimental way.

Workers draw strengths not only from industrial relations institutions but also from social interactions with community leaders, religious associations or other local social ties (Lier, 2007). Therefore, and in response to the isolated and precarious position of posted workers, a local community initiative and the local NGG office developed a strategy around changing the employment situation of the workers. In contrast to established German labour practices based on relations of social partnership punctuated by occasional episodes of collective bargaining conflict, this campaign privileged extensive media publicity, social coalition-building and local political pressure. In that sense certain features resemble the

logic of so-called social movement unionism. This type of unionism refers to a strategic orientation propounding that unions should form coalitions with other progressive social forces (Johnston, 2002). The union started to look for alternative sources of power by building coalitions with societal actors and by finding issues that appeal to the broader public. Extensive publicity included the 'shaming' of the German main contractor by drawing attention to new forms of 'slavery' within a highly industrialized country such as Germany, pleading to a larger understanding of social inequality. Furthermore, publicizing the municipal role in providing housing to the workers' employer contributed to putting pressure on local politics. These efforts were led by a small group of volunteer and union activists.

As Staggenborg (1986: 374) points out, 'understanding . . . the conditions under which coalitions emerge and succeed in advancing movement goals is crucial.' The conditions influencing the coalition were, amongst others, related to a shared ideology (McCammon and Campbell, 2002). The community initiative was sympathetic towards trade unions and thought it crucial to establish the connection. Moreover, the trade union appreciated the work done by the initiative because the union itself faced several constraints. Some scholars reported that in case of resource shortage, groups may seek out coalition partners because an alliance with another group can sometimes provide them with the means to accomplish their goals (Almeida and Stearns, 1998: 40). For the trade union it is generally problematic to interact with posted workers because of the absence of a common language or general lack of staff and hiring additional personnel is oftentimes not possible due to budgetary constraints (Interview NGG, 2013). Cooperating with other organisations helps to solve this dilemma. For the initiative, drawing on union informational materials and knowledge during the negotiations with the employer was helpful due to their lack of resources in this regard.

Moreover, the weak political position of the NGG has been a catalyst for it

to seek partners in order to push their agenda. Otherwise, the lack of impetus may have left their strategy unchanged. In certain cases, the lack of political opportunities, rather than their presence as argued by some authors (Diani, 1990; Staggenborg, 1986), may actually spur coalition-building (McCammon and Campbell, 2002; Tilly, 2001). Overall, the success of the efforts by all sides was strongly influenced by a social-justice frame that won media attention and broad public support, including among local politicians. This development may prove problematic when we conceive of the mass media as agenda-building instead of as a mere instrument or resource for activists, which can privilege certain groups over others and structure the chances for discursive success (Blanco, 1997). Similar coalitions are increasingly forming in other regions where meat factories are present and also nationwide in the context of organising posted and labour migrants more broadly.

The mobilisation of posted workers depended on the flexibility of the community initiative, the language skills and trust related to a certain extent to a shared identity. According to the community initiative it was its ability to act and react more flexible than the local union office (Interview Community Initiative, 2012). The proximity to the workers' housing site facilitated frequent visits. Moreover, due to the migratory background and shared language between one of the activists, the workers' trust was more easily established than would have been possible for the local union officers. Another important catalyst was that the community initiative served as a shield for the workers' anonymity. While the trade union can generally protect anonymity, it has to reveal the workers' identity in, for example, more formal legal proceedings due to the absence of collective redress in Germany. Nevertheless, it was important that the NGG stepped in to formally negotiate the takeover of the workers with the employer because it was able to draw on experiences with employers' negotiations and established contacts with the main contractor. New experimental strategies may aim not only to revitalize previously existing institutions but to build them as well (Turner, 2009:

308). Due to the nationwide effort to increase media pressure on politics to act by exposing precarious employment and living conditions of workers, local governments funded service points for posted workers and the formation of an employers' association that negotiated a sectoral minimum wage and also helped to place the issue of statutory minimum wages firmly on the political agenda (Behrens and Pekarek, 2012). In that sense, union ability and willingness to form coalitions with societal actors depends not only on the country but on the nature of the employment structure (national or transnational) and industry-specific factors.

In the case of transnational posted work the short-lived nature of the transnational action was effective because it was able to address the immediate needs of the posted workers. Due to their temporary employment status in the host country, they were not looking for an institutional channel representing their long-term interests but rather needed a voice mechanism that would help them alter certain modes of management conduct (Interview Polish posted worker, 2012). Transnational collective action did take place through local ad hoc organisations when certain problems needed to be addressed. Even though workers did not act out established scripts of collective worker resistance such as joining the union or initiating a legal case against the subcontractors, their act of resistance was constituted by challenging existent forms of management conduct (Isin, 2009). Contrary to conventional claims, labour migration is not necessarily a purely voluntary process (Cohen, 1987). The interviewed posted workers came to Germany not because of the enthusiastic embrace of freedom of movement but because of socioeconomic problems, particularly low wages and unemployment but also debt payment, medical procedures for family members, or simply being able to afford a better life. For the workers the balance has to be struck between retaining the employment but countering certain management conducts covertly.

The case of transnational action did not cause an overall liberation from the unequal power relations within the pan-European labour market. Even though the workers' position in the labour market improved momentarily, they still navigate

in a highly flexible labour market, moving from one short-term contract and low-paid job to the next. Their 'lived experience' can still be classed as a low-paid, easily replaceable source of labour. Their employment contract was extended for one month but their employment status afterwards remained uncertain. The contact between the union, the community initiative and the workers disintegrated. However, even short-lived transnational labour alliances could still be useful for the purposes of a transnational action (Brookes, 2013). Some of these workers may have gained valuable experience in collective organisation and may be more predisposed to collective orientation in their next employment post (MacKenzie, 2010). After all, transnational solidarity does not develop automatically, but is the result of concrete struggles (Bieler 2014). While economic competition is certainly an obstacle to union action, it may also initiate it since unions were in any case founded as a counterforce to the commodification of labour (Erne, 2010).

The findings of this chapter contribute to a recent but growing literature revealing blind spots in comparative cross-national perspectives based on institutional equilibrium. Recent findings in different institutional contexts such as the UK, France, Germany and the Netherlands point to fundamental similarities underlying the mobilisation efforts for previously unorganised groups of workers (Bertossi, 2010; Gumbrell-McCormick, 2011). In Germany trade unions have adopted similar organising tactics as found in the UK context to incorporate contingent workers into collective channels of representation (Vandaele and Leschke, 2012). Moreover, a similar observation has been made in the French context with regards to immigrant workers more generally (Tapia and Turner, 2013). Other studies on trade-union and posted-worker solidarity in the Netherlands showed that modes of mobilisation such as media exposure and access to new resources and instruments of power also required coalition-building (Berntsen and Lillie, 2014). In France increased alliance-building between trade unions and other civil society actors has been observed to counter exploitative

practices affecting posted workers (Lefebvre, 2006).

The cases point to common dynamics in today's form of capitalism and the opportunity structures to counteract the current tendencies. The chapter suggests that this and also other case studies in similar contexts can be viewed as advances to reterritorialize deregulated labour markets. Reterritorialization as resistance may take place as a reaction against injustice but it may also involve a sense of 'dreaming of something better' (Pile and Keith, 1997: 30). By trying to resist it is also possible to imagine or dream that resistance is possible, advancing the search for alternative worlds. The commonality between the different findings is pointers as to how unions mobilize 'invisible workers' in the face of increasing employer opposition (Baccaro *et al.*, 2010). These case studies can enhance our understanding of the opportunities and challenges for unions and workers in an era of increased labour mobility instead of oscillating between the 'converge' and 'varieties of capitalism' debate.

5.6 Conclusion

The possibility for posted worker resistance is embedded in the deep structural changes in the European labour market. Novel transnational workspaces are being created in the European Union and we need to investigate not only how labour power resists at the policy level but also how workers are able to claim their labour rights in the absence of collective labour power in these marginal spaces. Traditional avenues of resistance have become difficult to access for transnational posted workers in the German meat industry. The paper has challenged the understanding of German unions being constrained by the institutional framework to seek coalitions with societal actors (Kitschelt and Streeck, 2003).

The case study has shown that posted workers are able to exercise voice through channels largely uncommon to the German institutional framework. In the German meat industry the weak institutional position of the trade union and

the porous posting regulation led the trade union to seek out new strategies in an experimental way. While trade unions have largely been unable to mobilize this workforce, in this case, a community initiative stepped in to fill the gap. The case demonstrates that the transnational nature of the posted worker's employment relationship and living situation requires a different approach to organise resistance beyond the traditional institutional perspectives on German industrial relations.

Several conditions underlie the emergence of the coalition. First, the need to share resources (flyers) and the possibility of dividing the work according to ability/expertise (the mobilisation by the community initiative and the formal negotiation with the employer by the NGG) were preconditions for the cooperation. Second, achieving the NGG's goals required seeking out new partners. For posted workers it was possible to exercise voice in the absence of traditional channels of representation because of the time-intensive and flexible approach by the community initiative as well as shared language skills and to a certain extent a shared identity. Overall, the success of the effort on all sides was strongly influenced by a social-justice frame that won media attention and broad public support, including among local politicians. Also, it was important that the parties had a particular workplace bargaining power as the employer may have reacted differently otherwise.

Similar coalitions are increasingly forming in other regions where meat factories are present, and also nationwide in the context of organising posted workers and in relation to labour migrants and contingent workers more broadly. This suggests that the findings presented here may be representative of broader trends in the EU labour market, whereby loopholes in the regulation and the growth of weakly organised sectors call for a more nuanced understanding of labour differentiation. The cases are able to provide a microcosm of the conditions under which resistance may unfold in poorly regulated workspaces where traditional avenues to protest are blocked or marginalized.

More reflection is needed because different forms of power and labour markets, such as posting in a pan-European labour market, may call for different forms of resistance. This has some critical implications at the level of employment relations and labour market reform. Changes are needed in the current forms of labour opposition, especially in non- or less-unionised and highly flexible sectors where traditional forms of protest are undermined or marginalized, in order to improve the conditions of permanent and temporary, settled and mobile workers alike. Acknowledging different forms of labour differentiation is a key step in this process for industrial relations actors in order to be able to support alternative modalities of resistance in poorly regulated workspaces. Future research may further investigate whether these practices will undermine or coexist next to more traditional forms of resistance and whether new alliances can be formed in this process.